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THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

BENJAMIN McCORMICK,

Case No.: 3:15-CV-01363-MO

Plaintiff

v.

**JOINT MOTION FOR STAY OF
PROCEEDINGS**

**UNITED STATES OF AMERICA,
acting by and through the BUREAU
OF LAND MANAGEMENT,**

Defendant.

Plaintiff and Defendant through counsel, submit the following joint motion for stay of proceedings.

This is an action under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*, based on injuries that Plaintiff Benjamin McCormick suffered in a diving accident at the Cove Palisades State Park on August 19, 2012. Plaintiff completed service of process on the United States on September 21, 2015, and the government's response to the complaint is due to be filed on November 20, 2015.

Plaintiff also has an action pending against the state of Oregon regarding the same accident (hereinafter, "the State Court Action"). On June 9, 2015, the Jefferson County Circuit Court granted the state's motion to dismiss the State Court Action based on the Oregon recreational immunity statute, O.R.S. § 105.672, *et seq.* (Exhibit 1.) Plaintiff has appealed the Circuit Court decision, and the opening brief in Plaintiff's appeal is scheduled to be filed in November 2015. *See McCormick v. State of Oregon*, Oregon Court of Appeals Case No. A159931.

The United States also intends to raise recreational immunity as a defense in this action. *See* 28 U.S.C. § 2674 ("The United States shall be liable . . . in the same manner and to the same extent as a private individual in like circumstances."). The parties believe that the Oregon Court of Appeals' decision in the State Court Action may result in controlling authority on one or

more issues in this case. For that reason, the parties believe it would serve the interests of judicial economy to stay proceedings in this case until the Court of Appeals issues a decision in the State Court Action. The parties are unable to give a precise estimate when the Oregon Court of Appeals will issue a decision, but a decision is not likely to occur for at least six months or more. The parties are prepared to file periodic status reports with the Court regarding the status of the State Court Action.

Wherefore, for the foregoing reasons, the parties respectfully request that the Court stay proceedings in this action pending a decision by the Oregon Court of Appeals in the State Court Action.

Dated this 28th day of October 2015.

Respectfully Submitted,

Dwyer Williams Potter Attorneys, LLP	BILLY J. WILLIAMS Acting United States Attorney District of Oregon
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